

Hon. Tana Lin
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KURT BENSHOOF, Defendants.

Plaintiff,

v.

No.: 2:24-cv-00343-TL

CITY OF SHORELINE, KING
COUNTY, TOWN & COUNTRY
MARKETS, EVAN B. FAGAN,
WILLIAM C AKERS, and MR.
THOMPSON,

**PLAINTIFF'S MOTION TO
STRIKE DECL. SUMMERS (Dkt 77)**

Plaintiff moves to strike Decl. Ann Summers (Dkt 77).

I. BACKGROUND

In Dkt 76, King County Defendants filed a response to Plaintiff's motion to strike Counsel Summers' responses on behalf of Mr. Akers and Mr. Thompson in their individual capacity on the grounds that Counsel Summers, a county prosecuting attorney, has no authority to provide defense services to local governmental employees who have been sued in their individual capacities.

In Dkt 77, Counsel Summers filed "DECLARATION OF ANN SUMMERS IN SUPPORT OF SHORELINE AND KING COUNTY DEFENDANTS' OPPOSITION TO MOTION FOR "JURISDICTIONAL DISCOVERY"". In this Declaration, Counsel

PLAINTIFF'S MOTION TO STRIKE DECL. SUMMERS (Dkt 77)
No. 2:24-cv-00343-TL

1 Summers declared that she represents “Defendants Shoreline, King County, Deputy Akers
2
3 and Detective Thompson in this case.”

4
5 Counsel Summers attached Exhibit 1, verdicts in Seattle Municipal Court Case
6 Nos. 671384, 676175, 676207, 676216, 676463 and 67492; for such none of the parties in
7
8 this case are parties to; nor which Counsel Summers has any personal knowledge of.

9
10 In Decl. Summers (Dkt 77), Counsel Summers also attached Exhibit 2, a criminal
11 complaint filed against Plaintiff by the State of Washington, and Exhibit 3, an order for
12 continuance in the same 24-1-02680-7 SEA criminal case. Here again, none of the parties
13
14 in this case are party to 24-1-02680-7 SEA, nor does Counsel Summers have any personal
15
16 knowledge of 24-1-02680-7 SEA.
17

18 19 II. ARGUMENT AND AUTHORITY

20 “Under Federal Rule of Civil Procedure 12(f), a party may ask the court to strike
21
22 “any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.”
23
24 Fed. R. Civ. Proc. 12(f). “ ‘Immaterial’ matter is that which has no essential or important
25
26 relationship to the claim for relief or the defenses being pleaded.... ‘Impertinent’ matter
27
28 consists of statements that do not pertain, and are not necessary, to the issues in question.”
29 *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir.1993), rev’d on other grounds by
30
31 *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 114 S.Ct. 1023, 127 L.Ed.2d 455 (1994).”
32
33 *Greenwich Ins. Co. v. Rodgers*, 729 F. Supp. 2d 1158, 1162 (C.D. Cal. 2010)

34 A matter is immaterial if it “has no essential or important relationship to the claim
35
for relief or the defenses being pleaded.” *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527

(9th Cir.1993), rev'd on other grounds by 510 U.S. 517, 114 S.Ct. 1023, 127 L.Ed.2d 455 (1994).

Since the proceedings of 24-1-02680-7 SEA and Seattle Municipal Court Case Nos. 671384, 676175, 676207, 676216, 676463 and 67492 have no essential or important relationship to the claim for relief or the defenses being pleaded; nor do they pertain to the issues in question; the matters in the criminal cases cited in Decl. Summers are "immaterial" and "impertinent" *Fantasy, Inc. v. Fogerty* (9th Cir.1993).

As the criminal matters are immaterial and impertinent to this civil proceeding, Plaintiff and this Court should construe Decl. Summers (Dkt 77) as being presented for an improper purpose, such as to prejudice this Court, and to harass or needlessly increase the cost of litigation. FRCP 11(b)(1)

CONCLUSION

For the reasons stated, Plaintiff respectfully moves the Court to grant Plaintiff's Motion to Strike Decl. Ann Summers (Dkt 77).

RESPECTFULLY SUBMITTED,



Kurt Benshoof, Plaintiff *pro se*
1716 N 128th Street
Seattle, WA 98133
King County Correctional Facility – Seattle¹
B/A 2024-008067, UCN# 10518097
500 Fifth Ave., Seattle, WA 98104
East - Lower B - 9th Floor - Cell #6
Email: kurtbenshoof1@gmail.com
[no access to internet/email]

¹ Subject to change without notice, mail delivery [send/receive] not guaranteed.
PLAINTIFF'S MOTION TO STRIKE DECL. SUMMERS (Dkt 77)
No. 2:24-cv-00343-TL

1
2 The foregoing statements of fact were typed up by the undersigned, upon Mr. Kurt
3 Benshoof's request and to the best of the undersigned's understanding.²

4
5
6 Signature: _____

Date: _____

7 /URVE MAGGITT / urve.maggitti@gmail.com
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

² See *Faretta v. California* and Section 35 of the **Judiciary Act of 1789, 1 Stat. 73, 92**

AFFIDAVIT

The foregoing were typed up by the undersigned, upon Mr. Benshoof's request and to the best of the undersigned's understanding.³

Federal and State Constitutions require that criminal prosecutions conform to prevailing notions of fundamental fairness and that criminal defendants be given a meaningful opportunity to present a complete defense. *State v. Wittenbarger*, 124 Wn.2d 467, 474-75, 880 P.2d 517 (1994).

Mr. Benshoof is being held incommunicado without access to pen, paper and envelopes. Appellant's legal mail is deliberately obstructed and unreasonably delayed. Mr. Benshoof has the first amendment right to access all court and to litigate/prosecute his case(s) without any obstruction by the state, the justice system nor the court's.

In 1975 in *Faretta v. California*, United States Supreme Court acknowledges an established historical fact: "Section 35 of the Judiciary Act of 1789, 1 Stat. 73, 92, enacted by the First Congress and signed by President Washington one day before the Sixth Amendment *813 was proposed, provided that 'in all the courts of the United States, the parties may plead and manage their own causes personally or by the assistance of such counsel . . .'. The right is currently codified in 28 U.S.C. s 1654."⁴

The Court quoted from Section 35 of the **Judiciary Act of 1789, 1 Stat. 73, 92** which states as follows:

"SEC. 35. And be it further enacted, **That in all courts of the United States, the parties may plead and manage their own causes personally or by assistance of such counsel or attorneys at law**"⁵

Judiciary Act of 1789 was passed before ratification of the Sixth Amendment in the Bill of Rights in 1791. The drafters of the Sixth Amendment had deliberately removed the word *attorneys at law* from the Sixth Amendment, and substantially amended the language to read: "*right to have the Assistance of Counsel.*"

Signature: _____

/URVE MAGGITT

Date: _____

urve.maggitti@gmail.com

ACKNOWLEDGMENT

³ See *Faretta v. California* and Section 35 of the Judiciary Act of 1789, 1 Stat. 73, 92

⁴ *Faretta v. California*, 422 U.S. 806, 812-13, 95 S. Ct. 2525, 2530, 45 L. Ed. 2d 562 (1975)

⁵ "The Judiciary Act; September 24, 1789, 1 Stat. 73. An Act to Establish the Judicial Courts of the United States." "APPROVED, September 24, 1789."
https://avalon.law.yale.edu/18th_century/judiciary_act.asp

ACKNOWLEDGMENT

AFFIDAVIT

(Verification)

STATE OF PENNSYLVANIA)
COUNTY OF CHESTER)

I, Urve Maggitti, the undersigned Affiant hereto, do hereby declare under penalties of perjury under the laws of the Commonwealth of Pennsylvania and the United States of America, that the foregoing accounting of facts are true and correct to the best of my current knowledge and belief.

I am over the age of 18 years of age, am a resident of the Commonwealth of Pennsylvania, have personal knowledge of the matters of this affidavit, and am capable of making such affidavit.

Pursuant to 28 U.S. Code § 1746 (1) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 4, 2024 /2024.

Signed: 
Urve Maggitti

Notary as JURAT CERTIFICATE

State of Pennsylvania _____

BEFORE ME personally appeared Urve Maggitti who, being by me first duly sworn, executed the foregoing in my presence and stated to me that the facts alleged therein are true and correct according to her own personal knowledge.


Notary Public,

My commission expires: 07/20/27

Commonwealth of Pennsylvania - Notary Seal
Ryan W. Graham, Notary Public
Montgomery County
My commission expires July 20, 2027
Commission number 1433473
Member, Pennsylvania Association of Notaries

Page 6

CERTIFICATE OF SERVICE

Plaintiff hereby certifies that the foregoing motion will be send to all counsel of record by email to the addresses listed below.

Ann Marie Summers

KING COUNTY PROSECUTING ATTORNEY'S OFFICE (FIFTH AVE)

701 FIFTH AVE

STE 600

SEATTLE, WA 98104

206-263-4008

Fax: 206-296-0191

Email: ann.summers@kingcounty.gov

ATTORNEY TO BE NOTICED

Colin M George

KING COUNTY PROSECUTING ATTORNEY'S OFFICE (FIFTH AVE)

701 FIFTH AVE

STE 600

SEATTLE, WA 98104

206-263-4008

Email: cogeorge@kingcounty.gov

ATTORNEY TO BE NOTICED

Peggy C Wu

KING COUNTY PROSECUTING ATTORNEY'S OFFICE (FIFTH AVE)

701 FIFTH AVE

STE 600

SEATTLE, WA 98104

206-263-4008

Email: pwu@kingcounty.gov

TERMINATED: 08/19/2024

Attorneys for Defendants Town & Country

Markets, Inc. and Evan B. Fagan

Socius Law Group, PLLC

One Union Square

600 University St., Suite 2510

PLAINTIFF'S MOTION TO STRIKE DECL. SUMMERS (Dkt 77)

No. 2:24-cv-00343-TL

1 Seattle, Washington 98101
2 Telephone 206.838.9100
3 Facsimile 206.838.9101

4
5 **Adam R. Asher**, WSBA #35517
6 aasher@sociuslaw.com
7 206-838-9110

8 **Courtney J. Olson**, WSBA #54548
9 colson@sociuslaw.com
10 206-838-9153

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35